

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

UNITED STATES OF AMERICA, )  
                                  )  
Plaintiff,                    )  
                                  )  
v.                            ) No. 4:20-CR-00001  
                                  )  
KYLE ALLEN AUBUCHON,        )  
                                  )  
Defendant.                    )

**TELEPHONE CONFERENCE**

**BEFORE THE HONORABLE NOELLE C. COLLINS  
UNITED STATES MAGISTRATE JUDGE**

**APRIL 9, 2020**

**APPEARANCES:**

For Plaintiff:           Katharine Dolin, Esq.  
                                 Zachary M. Bluestone, Esq.  
                                 OFFICE OF THE U.S. ATTORNEY  
                                 111 South 10th Street, 20th Floor  
                                 St. Louis, MO 63102

For Defendant:           William Thomas Marsh, Esq.  
                                 OFFICE OF FEDERAL PUBLIC DEFENDER  
                                 1010 Market Street, Suite 200  
                                 St. Louis, MO 63101

Pretrial:                   Bradley Rentfro

Recorded By:              T. Tillman

Transcribed By:           REAGAN A. FIORINO, RMR, CRR, CSR, CCR  
                                 Official Court Reporter  
                                 United States District Court  
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PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING  
TRANSCRIPT PRODUCED BY COMPUTER-AIDED TRANSCRIPTION

APRIL 9, 2020

(The proceedings commenced at 12:08 p.m.)

5 I've set this matter for oral argument on  
6 Defendant's Motion to Reconsider Detention Order based on a  
7 change in circumstances. It was filed under seal as  
8 Docket 30. The government has responded and I have the  
9 parties -- it's my understanding for --

10 Well, would defense counsel make your appearance by  
11 telephone.

12                   **MR. MARSH:** Yes, Your Honor. Bill Marsh appearing  
13 on behalf of Mr. Aubuchon who has consented to waive his  
14 appearance for this hearing.

15                           **THE COURT:** All right. Who is on the phone for the  
16 government?

17                   **MR. BLUESTONE:** Zach Bluestone for the  
18 U.S. Attorney's Office and Katharine Dolin, who is counsel of  
19 record also on the line.

20 **THE COURT:** Do I have the pretrial officer as well?

21                   **PRETRIAL OFFICER:** Yes, Brad Rentfro with the  
22 Pretrial Services Office.

23 || **THE COURT:** All right. Thank you.

24 I've reviewed the pleadings and I wanted to hear  
25 from the parties. Is there any additional information that

1 the Court should consider, especially in light of the fact  
2 that this motion is made after Mr. Aubuchon has entered a  
3 guilty plea.

4 **MR. MARSH:** If I may, Your Honor, I want to  
5 reiterate a couple of things. First of all, the pretrial  
6 services report references a couple pending state cases. I  
7 want to be clear that Mr. Aubuchon is still on bond for both  
8 of those cases. One is a misdemeanor paraphernalia charge.  
9 The other is a stealing fourth offense charge; so it would  
10 have been a misdemeanor absent the prior misdemeanor  
11 convictions. And he does have counsel on both of those  
12 charges; so he would have assistance dealing with any court  
13 appearances on those.

14 Other than that, I don't have anything to add to the  
15 original pleadings, but I'm certainly happy to answer any  
16 questions the Court may have.

17 **THE COURT:** All right. On behalf of the government.

18 **MR. BLUESTONE:** Yes. One point on the law that I  
19 wanted to emphasize under 3142(i), as we discussed in a  
20 hearing that we had with Mr. Marsh and yourself last week,  
21 this only allows for temporary release where the defendant has  
22 identified an appropriate person that they can be released to  
23 and only for compelling reasons.

24 In this unique context where a defendant is awaiting  
25 sentencing but the trial or guilty plea has already been

1 completed, there's a case I wanted to direct you to. It's  
2 *Hartsell*. It was published after our response was filed and  
3 it explains why 3142(i) does not apply after the guilt phase  
4 has been completed.

5 As that court points out, 3142 governs presentencing  
6 release as opposed to pretrial release. And as the *Hartsell*  
7 court makes clear, the burden flips under 3142 to the  
8 defendant to justify why they should be released.

9 As we discussed last week, more than 95 percent of  
10 the courts around the country have denied motions for pretrial  
11 release under 3142(i). The *Hartsell* court says that they were  
12 unaware of any cases that had granted a presentencing release  
13 under 3142(i) and I've looked this morning and have been  
14 unable to find any as well.

15 The *Hartsell* decision also does a nice job of  
16 emphasizing the appropriate person standard under 3142(i)  
17 which requires the defendant to identify someone they can be  
18 released to who would be able to maintain custody over them  
19 and make sure that they don't reoffend.

20 Mr. Aubuchon didn't attempt to identify any such  
21 appropriate person in his motion. The home plan that was  
22 outlined in the pretrial report identifies his mother as the  
23 person he would be released to, but that's where he was living  
24 when he committed both the instant offenses and three other  
25 state offenses that were mentioned in the pretrial report. As

1 the *Hartsell* opinion makes clear, it's inappropriate to  
2 release a defendant to even a close family member if they were  
3 living with that person when they committed the instant  
4 offense or other offenses.

5 Just on a final note, Pretrial, as you are aware,  
6 has recommended detention in this case. My understanding is  
7 that's still their position. With respect to Mr. Aubuchon,  
8 just skimming down the pretrial report, for two thirds of his  
9 19 prior offenses that are listed in the report, he has either  
10 failed to appear, absconded or committed another offense while  
11 on bond. He committed the instant offense while he was on  
12 bond for three charges and their report, I think, does a nice  
13 job of outlining his substance abuse problems which not only  
14 include heroin, a heroin addiction but also frequent use of  
15 methamphetamine and marijuana.

16 So for all of those reasons, even if the Court were  
17 to consider the request, Mr. Aubuchon has not met his burden  
18 of demonstrating he would no longer pose a flight risk or a  
19 danger to the community as this Court found in ordering his  
20 detention.

21 **THE COURT:** All right. I did not ask if anyone else  
22 was on the phone as well.

23 No? All right. I always like to ask that as well  
24 because the public theoretically could dial in if they wanted  
25 to keep up with a particular case.

1                   So with respect to the pretrial officer who is on  
2 the line, any questions for the pretrial officer by the  
3 parties?

4                   **MR. MARSH:** I have no questions, Your Honor. I was  
5 under the impression they had reached out to Mr. Aubuchon's  
6 mother, and I don't know if that warrants any comment, but I  
7 do believe they reached out and confirmed a home plan.

8                   **THE COURT:** All right.

9                   **MR. MARSH:** And, Mr. Rentfro, perhaps you can  
10 elaborate on that.

11                   **PRETRIAL OFFICER:** Yes, Mr. Marsh.

12                   This is Brad Rentfro with Pretrial.

13                   I did recently speak with the defendant's mother and  
14 she reaffirmed that the defendant can return there to the  
15 address if he is released on bond. She didn't have any  
16 questions or concerns about that.

17                   Given the nature of her employment, I think she  
18 would be at the household -- my understanding she is a manager  
19 at a hotel, so given the COVID virus situation, she would be  
20 available at the house to kind of assist with the defendant if  
21 he is released.

22                   **THE COURT:** All right. And, Mr. Marsh -- well, I am  
23 going to ask the government to supplement his response in  
24 light of the case that was referenced. You mentioned a name,  
25 but I did not get a cite. So however you want to do it,

1 Ms. Dolin or Mr. Bluestone. I'm not sure which one of you are  
2 going to be responding, but the government should supplement  
3 its response based on the case.

4 And, Mr. Marsh, I don't know if you were aware of  
5 this case. Do you want an additional opportunity to review  
6 the government's response?

7 **MR. MARSH:** I was unaware of the case, Your Honor.  
8 I would like to take a look at it, at least have an  
9 opportunity to point out any distinctions, if I feel there are  
10 any worth pointing out.

11 **THE COURT:** Okay. Now, obviously this motion is --  
12 was filed with the hope of some timely ruling, but I -- so how  
13 long would the government need to supplement its response?

14 **MR. BLUESTONE:** Your Honor, I think that the case  
15 speaks pretty well for itself; so we should be able to file  
16 something just so you have a citation to it. Again, just to  
17 make clear, that decision came down after our response was  
18 filed, which is why it wasn't included in our original  
19 response.

20 **THE COURT:** No, that's fine. These things are  
21 evolving. The cases are ruling -- this Court is ruling  
22 regularly on these matters, and so it is important for me to  
23 consider, and any other judge of this court, to consider what  
24 the law is. Because most of these motions do concern pretrial  
25 detainees. And there are different provisions that apply to

1 an individual who is a pretrial detainee than for someone who  
2 is a post-plea detainee but presentencing.

3 So I would certainly want to know what the most  
4 current state of the law is, as does defense counsel as well,  
5 so that I can apply the correct standard in making my  
6 findings.

7 So, again, how much time?

8 **MR. BLUESTONE:** I think we can have that citation on  
9 file sometime today.

10 **THE COURT:** All right. Then, Mr. Marsh, how much  
11 time would you like?

12 **MR. MARSH:** Your Honor, if I could have until  
13 Monday.

14 **THE COURT:** Certainly.

15 **MR. MARSH:** I will try to respond as quickly as I  
16 can. I can even file something, if you would like, if I don't  
17 feel a response is warranted, something or at least e-mail  
18 someone saying that I am opting not to.

19 **THE COURT:** All right. That's fair enough. Either  
20 way I will look for some type of response or a notice of "no  
21 further response" by Monday.

22 **MR. MARSH:** Thank you.

23 **THE COURT:** And, Mr. Bluestone and Ms. Dolin, let me  
24 also ask you, because I am aware that this -- an argument was  
25 raised in a different case with a similar fact pattern, that

1 is the defendant has changed, has entered a plea of guilty and  
2 has requested the opportunity to revisit the prior order of  
3 detention and seek temporary -- temporary release under  
4 subsection (i). It's my understanding the government raised  
5 the argument that that section does not apply when a defendant  
6 has already entered a guilty plea. Now, maybe the case you've  
7 cited covers that argument. I don't know. But is that the  
8 position that the government is taking as well here?

9                   **MR. BLUESTONE:** Yes, Your Honor. I think the  
10                   *Hartsell* case is the one we will be supplementing with. It  
11                   makes it pretty clear that the 3142 -- 3142's applicability  
12                   ends when the guilt phase is completed; so that would apply  
13                   equally to cases where sentencing has already been completed  
14                   as well.

15                   **THE COURT:** All right. Thank you.

16                   And just finally for Mr. Rentfro, so the record is  
17                   clear, has the pretrial recommendation changed based on any  
18                   review of the motion that was filed by the defendant?

19                   **PRETRIAL OFFICER:** No, Your Honor. Pretrial is  
20                   still recommending detention at this time. I would just kind  
21                   of note with Mr. Aubuchon's history of substance abuse, given  
22                   the current COVID-19 situation, any substance abuse treatment  
23                   that we could offer him would be minimal. Our inpatient  
24                   services have closed and our outpatient services are minimal  
25                   at this time. I wanted to note that for the Court.

1                   **THE COURT:** All right. Thank you.

2                   If there's nothing else then, we will be in recess.

3 Thank you.

4 (The proceedings concluded at 12:20 p.m.)

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CERTIFICATE

I, Reagan A. Fiorino, do hereby certify that I am a duly appointed official court reporter for the United States District Court for the Eastern District of Missouri.

I further certify the foregoing is a true and accurate transcription as heard and understood from the taped proceedings held in the above-entitled case as has been transcribed from said tape to the best of my ability.

This reporter does not certify any transcript nor takes any responsibility for missing or damaged pages of this transcript when said transcript is copied and delivered by any party other than this reporter.

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April 20, 2020

Date

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/s/Reagan A. Fiorino

Reagan A. Fiorino